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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 13 February 1995 from the Permanent Representative of Myanmar to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights

I have the honour to transmit herewith a memorandum of observations and comments concerning document E/CN.4/1995/65 dated 12 January 1995, pertaining to the Union of Myanmar.

I should be grateful if the aforementioned memorandum could be kindly circulated as a document of the fifty-first session of the Commission on Human Rights, under agenda item 12.

(Signed) Maung Aye
Ambassador

GE.95-11192

Memorandum of observations and comments concerning document E/CN.4/1995/65 dated 12 January 1995, pertaining to the Union of Myanmar

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A. Introduction

The Commission on Human Rights, at its fiftieth session adopted without a vote Resolution 1994/85, entitled "Situation of human rights in Myanmar".

The Resolution, inter alia, contained elements and provisions relating to the following questions:-

- establishment of a democratic state in accordance with the aspirations of the people of Myanmar;
- the National Convention;
- matters pertaining to the national races, residing throughout the Union and in border areas, and numerous allegations related to human rights;
- general human rights situation in Myanmar;
- releases of detainees;
- the role of Tatmadaw (the Armed Forces);
- repatriation and resettlement of returnees, and Myanmar's co-operation with the UNHCR;
- the Myanmar Citizenship Law;
- Myanmar's co-operation with the ICRC;
- invitation to the Government of the Union of Myanmar to accede to international legal instruments relating human rights and humanitarian matters; and
- Myanmar's co-operation with the United Nations and the Commission on Human Rights.

Pursuant to the above Resolution, Special Rapporteur Professor Yozo Yokota also submitted his Report on the situation of human rights in Myanmar, contained in Document E/CN.4/1995/65 dated 12 January 1995.

Since the adoption of the Resolution at the fiftieth session of the Commission on Human Rights, and throughout the period of the past year, positive developments have continued to occur throughout the country in all fields of common endeavour toward the establishment of a multi-party democratic state in accordance with the aspirations of the people of the Union of Myanmar. These developments, together with observations and comments on document E/CN.4/1995/65 dated 12 January 1995 submitted by the

Special Rapporteur are furnished below for the ready reference of Delegations of Member States of the Commission on Human Rights and Observer Delegations in order to enable them to better appreciate the progress achieved in the Union of Myanmar.

B. The National Convention

The National Convention, comprising some 700 representatives and representatives-elect, is currently engaged in the task of laying down the basic principles for the elaboration of a strong and enduring constitution.

The National Convention constitutes a truly representative body, comprising representatives from the entire cross-section of social strata of the Myanmar people. It is composed of representatives from 8 categories of people as follows:

Categories	Number of representatives
1. Representatives from political parties	49
2. Representatives-elect	107
3. Representatives of national racial groups	215
4. Representatives of peasants	93
5. Representatives of workers	48
6. Representatives of intelligentsia and technocrats	41
7. Representatives of state service personnel	92
8. Other invited personages	57

Representatives of national races, peasants and workers

In nominating delegates under categories 3 to 5 to represent the national races, peasants, and workers, Selection Committees comprising 15 members each for State/Division, District and Township levels were formed. Each Committee is chaired by a General Administrative Officer and other members from the Administrative Departments who possess detailed knowledge of national racial groups, peasants and workers as well as local personages who have earned respect and trust.

Representatives of intelligentsia and technocrats

In nominating delegates to represent the intellectuals and intelligentsia, Selection Committees composed of senior administrative officials, academicians and intellectuals were formed.

Representatives of the civil service

In nominating delegates to represent the civil service, Selection Bodies were formed at various Government Ministries and Departments to select the delegates.

Other invited personages

Persons invited to attend the National Convention include representatives from armed groups who have returned to the legal fold to join the Government in carrying out border area development programmes.

Other invited personages also include those well known for their political, economic, social and administrative experiences.

The following progress has been attained at the National Convention:-

- 15 chapters and 104 fundamental principles which will form the basis for drafting the new constitution have been agreed upon.

- The Plenary Sessions have also produced chapters on the State, the State Structure and Head of State.

- At the Plenary Session convened on 2 September 1994, the Chairman of the National Convention Work Committee gave a clarification on basic facts and suggestions concerning Self-administered Areas, Legislature, Executive Branch and the Judiciary.

- At present, the National Convention is continuing its work on various chapters and provisions, reflecting the views and containing suggestions of participating representatives.

The National Convention is currently in session in Yangon.

C. National reconciliation

The Special Rapporteur has noted the recent successes of the Government initiative to invite the armed groups to enter into talks with the Government.

In this regard, the Permanent Mission of the Union of Myanmar would like to elaborate more on the aims and achievements of the national reconciliation process and to update developments.

Since Myanmar regained its national independence, national construction efforts exerted by successive governments did not bear fruit primarily due to disunity among the national races. The Government and the people of Myanmar firmly believe that unity among the national races is crucial for the continued enjoyment of independence and preservation of sovereignty, as well as for the political, economic and social progress of the country.

The Government and people are now engaged in a national endeavour to build a peaceful, democratic and modern country. In order to achieve this goal, the Government has laid down the following political objectives:-

- maintenance of peace and tranquillity to ensure political stability;

- national reconciliation; and

- the emergence of a new state constitution and the establishment of a democratic state in conformity with the constitution.

Emphasis is placed on national reconciliation, as it is in line with Government efforts to bring about peace and tranquillity, and consolidation of national unity. Successes in the national reconciliation process stand out as the most significant achievements attained by the Government.

Less than a year after its advent, the State Law and Order Restoration Council, in a spirit of national reconciliation, invited armed groups to return to the legal fold to enable them to participate in regional and national development projects. As a gesture of goodwill to expedite the attainment of amity among all national races, and with a view to strengthening national solidarity, the Myanmar Armed Forces unilaterally suspended all military operations against the armed groups since April of 1992.

The following thirteen armed groups have returned to the legal fold to date:-

(1) Kokang National Group, (2) Wa National Group, (3) Shan State Army (SSA), (4) Shan/Ahka National Group, (5) New Democratic Army (Kachin) (NDA), (6) Kachin Defence Army (KDA), (7) Pa-O National Organisation (PNO), (8) Palaung State Liberation Party (PSLP), (9) Kayan National Guard (KNG), (10) Kachin Independence Organization (KIO), (11) Kayinni National People's Liberation Front (KNPLF), (12) Kayan New Land Party (KNLP), (13) Shan National People's Liberation Organisation (SNPLO).

For the first time in many decades, peace and tranquillity have returned to areas where conflict and turmoil had previously reigned supreme. Never before in the history of independent Myanmar have so many armed groups returned to the legal fold in such numbers.

Not only are the members of these armed groups taking part actively in regional development projects together with the people and Tatmadaw, their representatives are also expressing their views and aspirations at the National Convention.

The Government continues to extend invitations to the remaining few armed groups who have not yet responded to its overtures to return to the legal fold and join hands in building a new nation.

Dialogue with Daw Aung San Suu Kyi

Among the developments in the process of national reconciliation is the on-going dialogue between leaders in the State Law and Order Restoration Council and Daw Aung San Suu Kyi.

The Chairman of the State Law and Order Restoration Council, Senior General Than Shwe and Secretary (1) Lieutenant General Khin Nyunt met with Daw Aung San Suu Kyi on 20 September 1994. Subsequently, another meeting took place between Lieutenant General Khin Nyunt and Daw Aung San Suu Kyi on 28 October 1994. The Judge Advocate General and the Inspector General of the Defence Services were also present at the meeting. Such meetings are scheduled to continue and are an internal affair of the Union of Myanmar.

D. Recent split in the KNU (Karen National Union)

Despite the Myanmar Government's invitation to the armed groups to return to the legal fold and unilateral suspension of military operations since April 1992, the Karen National Union led by Bo Mya did not demonstrate any intention to take advantage of this peace offer.

During the time of repeated peace overtures by the Government, the KNU organised other illegal armed groups based in their area of operation into the so-called "National Council of the Union of Burma (NCUB)". Bo Mya, leader of the KNU, also became the head of the NCUB, which laid down a strategy whereby they sought to discredit the Government of Myanmar abroad.

The following statistics reveal the extent of KNU attacks on civilians and the military following the unilateral suspension of operations by the Myanmar Armed Forces:-

- On 27 July 1992 the KNU attacked the Htimukhee Tatmadaw Post on the Eastern Yomah in Kyaukkyi Township on the east bank of the Sittaung river resulting in the deaths of two officers and 23 other ranks, with several more wounded.

- On 1 September 1992 the KNU attacked Hweponlang Post on the border resulting in the deaths of 44 Tatmadaw personnel including 3 officers.

- From 28 April to the end of December 1994, the KNU attacked Tatmadaw columns 98 times resulting in fierce battles in Bilin, Thaton, Pa-an, Hlaingbwe, Kawkareik, Myawaddy, Kyaikmaraw, Mudon, Thanbyuzayat, Yay, Dawai, Palaw, Tanintharyi, and Bokpyin townships resulting in much destruction and loss of life.

- The KNU attacked Tatmadaw forward posts and police stations 22 times. They opened fire on Tatmadaw headquarter stations 13 times. They shelled the distillery at Bilin town three times, attacked four times at Myawaddy and once each at Thaton, Myeik, Ye, Kamamaung village, Tanintharyi town, Papun airfield, and Shwe Hinthar jetty at Kawthaung, causing considerable civilian casualties.

- They mined passenger and goods trains seven times in Thanbyuzayat Township, fired on rivercraft twice, attacked passenger buses six times and blew up nine bridges.

- This deliberate and consistent pattern of terrorism demonstrates that the KNU targeted both civilian and

military objectives. Numerous civilians and military personnel lost their lives at the hands of the KNU. Not a few innocent villagers had their arms and legs amputated as a result of indiscriminate mine-laying by the KNU.

- These acts are no doubt what the Special Rapporteur had in mind when he referred in the Report under reference, to human rights abuses by armed groups opposing the Government.

- What is noteworthy is that these random and widespread acts of destruction were carried out not before, but after the Government's announcement, three years ago, of a unilateral cessation of military operations, and repeated invitations on the part of the Government to the armed groups to come over to the legal fold, and participate in the process of peace, development and national reconciliation.

As their second strategy, the NCUB formed a defiance committee to instigate the people of Myanmar and create unrest. They contacted other underground elements within the country to distribute seditious materials and carry out bombing attacks in towns and villages.

It has been revealed that between April 10 and 12, 1994, Bo Mya sent three of his officers to contact the heroin trafficker and Drug War Lord Khun Sa (who has been indicted on 10 counts for drug trafficking by a court in the United States) in an effort to engage in cooperation between the KNU and Khun Sa's Mong Tai Army (MTA), in the production of arms and land mines, and other economic ventures. From April 15 to 17, Khun Sa in turn dispatched two of his senior officers, including the Vice-Chief of Staff of the MTA to Manerplaw to coordinate military and economic cooperation between the MTA and the KNU.

Bo Mya placated his junior officers and other subordinates by explaining that he would strive for peace. His aspirations for peace were however portrayed in unrealistic terms that were not in conformity with the aspirations of the Kayin (Karen) nationals. Rather than following a path that would lead to enduring peace, he used the pretext of "peace" as a platform to further his personal ambitions.

The rank and file of the KNU yearned for peace for nearly three years. General dissatisfaction spread as no genuine peace materialised. The approximately 80% of the KNU who were Buddhists revered the venerable monk Myaing-gyi-ngu Sayadaw U Thuzana. Recently, when Bo Mya treated the Sayadaw with disrespect and evicted 40 monks including Myaing-gyi-ngu Sayadaw from the area, the general dissatisfaction erupted into an open demonstration involving about 400 KNU members and villagers at

Manerplaw camp. Junior KNU members had become dissatisfied with the leadership because they felt that the life led by KNU leaders was one of self-indulgence; that there was religious discrimination and lack of religious freedom; that there was unfairness in granting promotions, and that the leaders were in fact unwilling to strive for genuine peace. On 29 November, 1994, when Bo Mya expelled 40 Buddhist monks including the Myaing-gyi-ngu Sayadaw from the area they were residing, this dissatisfaction with the existing state of affairs led to an armed revolt against Bo Mya, which was joined by the villagers.

The numbers who revolted swelled to over 3000 and this group formed the Democratic Kayin Buddhist Organization (DKBO). The DKBO issued a declaration on 1 December 1994 in which they stated that their aims were:

- to build a peaceful and prosperous life for all national groups residing in Kayin State
- to give priority to progress and advancement
- to strive for economic development
- to promote and preserve the traditions, culture and religion of the nationals.

Realizing that the Kayin nationals would continue to suffer as long as a KNU led by Bo Mya existed, the DKBO forces attacked and occupied some KNU base camps with the support of the local people. As they occupied those KNU base camps, tens of thousands of people of Kayin State provided the DKBO with rations and other necessities.

Fall of the KNU headquarters at Manerplaw

On 5 January 1995, Bo Mya's KNU forces launched a massive offensive against the DKBO during which hundreds of people including civilians were killed and a pagoda, a monastery and sima were burned down. At this point, the local inhabitants requested assistance from the Tatmadaw. Since the aspirations of the DKBO revealed that they were sincere in their wishes for peace and stability of the region, which coincided with the objectives of the Government, the Tatmadaw provided necessary logistic support. Emboldened by the support of the populace and assistance from the Tatmadaw, the DKBO won a series of victories over Bo Mya's forces and finally occupied Manerplaw camp, the headquarters of the KNU. While the DKBO launched its assault on Manerplaw, the Tatmadaw units secured the rear with the aim of protecting nearby villages from attack by KNU remnants.

Now that there are prospects for peace in the Kayin State, plans for development projects for the area can be initiated. Once a lasting peace has been achieved, these plans can be put into operation and the Kayin State can look forward to being part of the development activities that are flourishing countrywide.

Hence, the fall of the KNU headquarters at Manerplaw was the culmination of internal dissent and split in the KNU, and the armed conflict between the Buddhist Kayin forces (DKBA) and the KNU leadership. This armed conflict between the two groups was due to the discontent of progressive elements who yearn for peace, and religious persecution of Buddhist Kayins by the KNU leadership. It needs to be stressed that the Manerplaw headquarters was captured by the DKBA forces and that the Myanmar Tatmadaw was not involved in the military assault on Manerplaw. The Myanmar Tatmadaw confined itself to giving only logistic support to the DKBA during the incidents revealed above.

Return of Kayin families to Myanmar

Kayin families, consisting of DKBO members, Buddhist and Christian Kayins and their families have been streaming back from camps on the other side of the border into Myanmar, despite the KNU's attempts to hinder their return to the Myanmar side.

As of 10 February, a total of 5,000 persons have returned to Myanmar.

They were received by the Myanmar authorities and the local people. Officials, Union Solidarity and Development Association members and local people are providing them with transport, food, clothing and other necessities. DKBO members and local residents have systematically settled them on the Myanmar side.

E. Development of border areas and national races and the rights of national races

The right to development

The Myanmar Government attaches great importance to the right to development of the people. Without this right to adequate shelter, food, clothing and other essential necessities of life, it would be difficult to promote and protect other aspects of human rights *including political, civil and cultural*

rights. For this reason, the Government has accorded top priority to the alleviation of poverty, and to the economic and social development of border areas where many of the national races reside. Perceptible and substantial progress has been registered in the development of border areas and national races as well as the overall economic development of the whole country.

A Master Plan for the development of border areas was systematically drawn up after thorough discussions among those charged with the responsibility to implement the plan. This Master Plan covers a period of 11 years - from fiscal year 1993-94 to 2003-2004. The main objective of the Plan is the alleviation of poverty in border areas, in parallel with Government efforts to eradicate poppy cultivation and opium refining in those areas.

F. Voluntary contribution of Labour

The Permanent Mission notes the recommendation of the Special Rapporteur that when the hiring of local villagers for porterage and other construction works may be required for regional development, it should be undertaken on a voluntary basis with the payment of adequate wages and the assignment of work of reasonable nature.

In this regard, the Mission would like to point out that it has always been a tradition in the Myanmar culture of donating labour in the building of monasteries, pagodas, roads and bridges. A belief persists that in doing so, it leads to mental and physical well-being. Those who can afford to, donate money, while those who cannot, donate their labour. It is widely accepted that voluntary work for the good of the community does not tantamount to forced labour or a violation of human rights.

It would of course be ideal if the country did not have to depend upon voluntary labour to get projects completed. Lack of sufficient financial resources to independently complete projects that would bring development and progress to areas that would otherwise remain undeveloped, the government has had to rely on the means available in order to improve the lives of the people of areas that would otherwise remain undeveloped. It is after all, the people who live in the areas under development and who provide the voluntary labour that ultimately enjoy the fruits of their endeavour.

For their contribution towards community development, remuneration is given to the volunteer workers by the government either on a piece-rate basis or at prevailing wage rates. In some cases, the authorities disburse a lump sum of money for the benefit of the whole community.

The authorities concerned do all they can to provide for the basic needs of the voluntary labourers. For example, a medical doctor was assigned to each of the sectors by the Myanmar Railways during the construction of the railway lines and a Chief Medical Officer toured the area regularly, in order to provide health care for the local populace. Various aspects of such endeavours have been witnessed by the Special Rapporteur during his tour of Myanmar, and has been incorporated in his Report.

It is not only the people who provide the labour to complete development projects, Tatmadaw personnel from various units in the area, while having to promote peace and security in the country, are also to be found in the forefront of the work-force of any project. Government employees from the ministries concerned also participate.

With regard to the use of civilian labourers by the Tatmadaw, we would like to reiterate that the law provides for the hire of civilian labourers to assist the members of the Tatmadaw who are on active duty. Porters can be recruited and employed by the armed forces after consultation with local authorities. This has been in practice in Myanmar since she regained her independence in 1948. Recruitment is based on the following three criteria:-

a) They must be unemployed;
b) They must be physically fit to work as porters;
c) A reasonable amount of wages must be fixed and agreed to beforehand.

The labourers must be paid from the time they leave their respective homes until they return at the completion of their duty. Apart from the daily wages, they are entitled to receive rail and steamer travelling warrants or actual money to cover the cost of transport to and from their homes and the operation area. The respective military unit has the responsibility of providing accommodation, messing, medical cover, and social welfare benefits for the hired labourers. Daily wages for these persons must be commensurate with those prevailing in the area. Civilian labourers used in operation areas are looked after by the Tatmadaw. Besides giving out daily wages, the Tatmadaw provides medical care for sickness and injuries.

Porters thus recruited are never required to accompany the troops to the actual scenes of battles; neither are they exposed

to danger. They are sent back as soon as their assignment is completed. They are placed in safe areas during operations. It is noteworthy that there exist volunteer porters and professional porters who earn their living by offering to work as porters on behalf of others.

Prison labour and construction activities

Mention has been made of the use of prison labour in construction activities for the public good. It must be kept in mind that in a great many countries throughout the world, sentences can be passed by courts of law to include compulsory labour for serious offences, according to existing national laws. In Myanmar, such sentences are part of the rehabilitation process. Furthermore, the prisoners can enjoy reduction of sentences through contribution of labour.

As evidenced in the Special Rapporteur's report, prisoners have been seen to work hand-in-hand with armed forces personnel and local civilians, and to quote from the report, "generally, prisoners as well as soldiers work eight hours a day on a voluntary basis. Once the defined part of the work is accomplished, a wage is distributed among the prisoners who are involved in the labour. Food is provided for free and they are entitled to three meals a day..."

G. The role of Tatmadaw (the Armed Forces)

The Special Rapporteur in his Report made reference to the principle concerning the role of the Tatmadaw in the guidelines being drawn up by the National Convention. He also made recommendations concerning members of the Tatmadaw, and their conduct to be in line with international human rights instruments and humanitarian law.

The Myanmar Armed Forces (Tatmadaw) represents the national defence force born out of our struggle for independence nearly fifty years ago. During this national struggle, they fought hand-in-hand together with the people. It was a struggle in which many of the indigenous Myanmar national races participated.

Since its inception, the Tatmadaw has been a voluntary force; it has its own political outlook; and has now matured in terms of both age and experience. Composed of various indigenous

national races, the Tatmadaw is a patriotic and dynamic force, made up of the sons and daughters of the citizens of Myanmar, dedicated to the defence and welfare of the State and the entire population.

All members of the Tatmadaw are volunteers who join the Armed Forces of their own free will, motivated by their sense of patriotism. The recruiting units follow strict rules and guidelines in accepting those who wish to join the armed forces. Only those who are fit and meet the requirements set down are allowed to join.

The Tatmadaw is a highly disciplined self-defence force imbued with a sense of patriotism. It has a code of proper conduct, and military rules which every member is required to observe scrupulously. Among the rules of conduct can be found the following:-

a) to avoid high-handedness in dealing with the people, and not to take advantage of the fact that the Tatmadaw wields arms and

b) to respect the beliefs, customs, creeds, cultures and traditions of the populace.

Apart from this, they are also required to understand and observe civil and criminal legal procedures. Any member of the Tatmadaw who infringes the law is punished by both the military and civil courts. This is evidenced by cases where action has been taken against Tatmadaw personnel who have infringed the law.

The officers and the rank and file of the Tatmadaw are trained systematically by motivated instructors in highly professional military institutions. Courses on humanitarian law form part of the curricula at the Defence Services Academy and other Officers' Training Institutions. With the cooperation of the International Committee of the Red Cross, training programmes concerning the four Geneva Conventions of 1949 are being conducted in Myanmar for Officers ranging from Tactical Operations Commanders to lower echelons. Again, under the auspices of the ICRC, officers are sent to Geneva and elsewhere for further training courses.

The history of the modern Myanmar Nation is synonymous with the history of the Tatmadaw. It has been in the forefront of national politics from the time of the struggle for independence. Since then, on four separate occasions, the Tatmadaw has been called upon to shoulder national responsibilities to protect and safeguard the nation when Myanmar's national sovereignty and independence were threatened.

As the Tatmadaw represents the single disciplined and most cohesive organisation in the country, and since it has always shouldered its primary responsibility of ensuring the non-disintegration of the Union, the non-disintegration of national solidarity, and the perpetuation of national sovereignty, it is only logical that the Tatmadaw should play a corresponding role in the transition that the country is undergoing from one political system to another, as well as in the future of the State.

It may be added that the Tatmadaw will remain engaged in national politics to safeguard national unity, independence and sovereignty, and will stay above party politics.

H. Releases of detainees

A number of detainees have been released in accordance with the Declaration made earlier by the Government. At the beginning of January 1995, 47 persons serving sentences after being convicted under existing laws were released from Insein (Yangon), Mandalay, Myingyan and Meiktila prisons. Their sentences were reduced under Section 401(1) of the Code of Criminal Procedure.

In addition, 54 persons who were serving their prison terms according to existing laws were released from various jails on 4, 6, 9 and 10 February 1995 respectively. They included Dr. Aung Khin Sint, poet Tin Moe and U Win Htein. Their terms were reduced under Section 401(1) of the Code of Criminal Procedure.

Legal framework for the detention of persons

In the Union of Myanmar, a person cannot be arrested and detained if it is not in accordance with the law. It is stipulated in Section 61 of the Code of Criminal Procedure that no police officer shall detain in custody a person for a period exceeding 24 hours. Where it is necessary to detain an accused person for more than 24 hours, a special order of a Magistrate has to be obtained under Section 167 of the Code of Criminal Procedure. The arrested person has the right of defence and the right to have legal defense counsel. Moreover, the arrested or detained person has the right to apply freely for bail to the Magistrate concerned and the Court may grant him bail according to the merits of the case.

Daw Aung San Suu Kyi has been restrained after 20 July 1994 in accordance with Section 10(b) and Section 14 of the Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts. Under Section 10(b) of the said Law, the Central Body, consisting of the Minister for Home Affairs as Chairman and the Minister for Defence and the Minister for Foreign Affairs as members, may restrain a person against whom action is taken, up to one year for safeguarding the State against danger. If it is necessary to continue the restraint of the person against whom action is taken, on the completion of one year, the Central Body may continue the restraint, with the prior sanction of the Council of Ministers, year by year up to 5 years. Hence, a person against whom action is taken, may be restrained for one year in accordance with Section 10(b) of the Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts, and restraint may be continued against that person year by year up to 5 more years in accordance with Section 14 of the said law.

I. Human rights in Myanmar

Myanmar is well-known for its unique culture. Tolerance, compassion and gentleness are the hall-marks of its unique culture. Discrimination on grounds of race, religion and gender are non-existent in the Union of Myanmar throughout its long history. The status of women in Myanmar is among the highest in the world.

In the Union of Myanmar, "...there [is] total absence of discrimination based on religion. From the highest ranks of government service and throughout the ranks of public service, the question of religion simply [does] not arise... The Myanmar society may in that respect be a model society". These words were not voiced by a Myanmar. They are comments submitted to the United Nations by Madame Sadako Ogata who visited Myanmar in 1990 as an independent expert. In Myanmar, there is complete freedom of worship, not only for Buddhism which is the religion of 90 per cent of the population but also for Christianity, Islam, Hinduism as well as animists. Freedom of worship is guaranteed in both the two previous constitutions of 1947 and 1974, and the State Law and Order Restoration Council, in keeping with this tradition, has promoted complete freedom of worship, and is also materially and financially supporting the various religions in the country as much as possible.

As the Myanmar people are a religiously devout people, the universal sentiments of *metta* (love and goodwill), *karuna* (compassion) and *mudita* (sympathetic joy) prevail countrywide. Because of the long and distinguished historical and cultural heritage, traditions and religious devotion, the people of Myanmar are a gentle and tolerant people.

Hence, basic human rights are guaranteed not only by law but also as an essential part of the Myanmar's custom, culture and tradition.

Myanmar has on many occasions expressed her views and policies on human rights, a few of which are reproduced below:

- Myanmar holds the view that countries differ from each other due to differences in historical background, cultural traditions, religion and level of development. Culturally and in terms of perception, there exists a vast difference between the East and West. By this, we do not mean to infer that there exist no human rights principles applicable to all persons. However, divergences can be seen in approaches and implementation of human rights practices. At the same time, countries or groups ofcountries should avoid attempting to impose their views and values of human rights on the rest of the international community. There is no single political and economic model applicable to all countries.

- For developing countries like Myanmar, the most essential and fundamental basic right is to meet the food, clothing and shelter needs and to raise the standards of living of the people. Without ensuring this basic right, other aspects of human rights cannot be effectively implemented. Although some countries stress the importance of civil and political rights, developing nations like Myanmar believe that equal prominence should be accorded to economic, social and cultural rights. The right to development is especially important to developing countries. It may be recalled that UN Secretary-General Dr. Boutros-Boutros Ghali had mentioned in a Human Rights Day Message: "Full human dignity means not only freedom from torture, but also freedom from starvation. It means freedom to vote as it means the right to education. It means freedom of belief as it means the right to health".

- It is our belief that community rights should have equal importance, if not more, than individual rights. Moreover, in times of conflict between individual rights and national interest, there are situations that call for priority to be accorded to the interests of the nation. Thus, the distinguished US Justice Oliver Wendell Holmes wrote,

"...When it comes to a decision by a Head of State upon a matter involving its life (the State's), the ordinary rights of individuals must yield to what he deems the necessities of the moment". Each individual possesses not only rights but also duties and obligations to his country and to his society. It is a fact of life that extreme practices of individual rights can lead to disorder and unrest. Economic development and political stability are interdependent since economic development can be obtained only during times of political stability. Similarly, economic development contributes toward political stability.

- As the views, approaches, application and implementation of human rights differ from country to country because of the dissimilarities in historical experience, cultural traditions, religion and level of development, Myanmar believes that implementation of human rights in the national context should be the responsibility and competence of each government. Human rights should not be used as a pretext for interfering in matters that are essentially within the domestic jurisdiction of states. By this, it does not mean that human rights can be systematically violated behind the barrier of non-interference. What remains paramount is to promote human rights through international cooperation and consensus-building.

- Together with other developing and non-aligned countries, Myanmar believes that there should be strict observance of the principles of sovereignty, territorial integrity and non-interference in the internal affairs of other states. Myanmar is opposed to the misuse of human rights with political motives, to double standards and selectivity, and means of applying pressure. Such tactics are detrimental and counterproductive to the advancement of human rights.

J. Allegations of human rights violations

As mentioned in the Report submitted by the Special Rapporteur, the Myanmar authorities have responded to all specific enquiries presented by him with regard to alleged human rights abuses, and such responses have been incorporated in his Report.

But it must be emphasised that claims of violations of human rights are qualified with words and phrases such as "it was alleged that", "claiming to be victims", "reportedly", "are said to include", etc. Such accusations appear under a single word chapter heading of the Report, all in capital letters, "ALLEGATIONS". The authorities have informed the Special Rapporteur that we are prepared to respond to specific allegations and claims when definitive information is provided - such as names, dates, places, and nature of supposed offences. And when such information is provided, we have responded adequately by presenting factual accounts of identified cases, and the legal action taken in conformity with the law. But if vague, sweeping and unsubstantiated allegations and accusations are inferred, we cannot help but conclude that such reports are mere allegations from prejudiced sources having no basis of truth - allegations formulated to exert pressure by those groups bearing ill-will towards the country.

It may also be mentioned that the Special Rapporteur himself has expressed his awareness that reported violations may be "arbitrary, exaggerated or distorted".

But life goes on normally throughout the country, which enabled the Special Rapporteur to travel extensively, and to meet and converse with ordinary people, and assess the pulse of the country. During his travels in Myanmar, he also had the opportunity to observe the normal functioning of various institutions of higher learning - visiting universities, conversing with professors, interviewing students as to their interests, and finally concluding that university life appeared normal and the students were enthusiastic in their studies, interested in a wide variety of topics.

K. Repatriation and resettlement of returnees and Myanmar's cooperation with the UNHCR

The Special Rapporteur has welcomed developments subsequent to the signing of the Memorandum of Understanding between the Union of Myanmar and the UNHCR to facilitate and guarantee the voluntary and safe return of Myanmar residents from Bangladesh.

In conformity with the bilateral agreement signed between the Governments of Myanmar and Bangladesh, the Government of Myanmar has extended full cooperation to the UNHCR and this is producing concrete and positive results.

The total number of returnees from 22 September 1992, the date on which repatriation began according to the bilateral agreement, up to 21 January 1995 has reached over 148,000. Of these, over 90,000 returned since the advent of cooperation with the UNHCR in April 1994.

According to the time-frame envisaged by the UNHCR, the whole repatriation process is due to be completed by December 1995 or January 1996. The United Nations High Commissioner for Refugees, in her opening statement at the forty-fifth session of the Executive Committee of the High Commissioner's Programme, has expressed her satisfaction at the accelerated pace of the voluntary repatriation.

Measures are also being taken by the Government to integrate the returnees smoothly back into society with provisions to facilitate their livelihood. There are also a number of foreign NGOs taking part in the community development programmes, along with United Nations agencies.

Cooperation with Non-Governmental Organizations

The Special Rapporteur has recommended that the Government continue its cooperation with Non-Governmental Organizations (NGOs) in assisting those who lack the basic necessities of life, medical care and proper education.

The Government on its part, acknowledges the positive contribution of NGOs toward nation-building endeavours, and will accordingly continue its interaction and cooperation with such organizations which are active in such fields as health, social welfare, and border area development. To name a few local NGOs involved are the Myanmar Medical Association, Myanmar Maternal and Child Welfare Association, the Myanmar Red Cross Society, Myanmar Council of Christian Churches, and Myanmar Anti-Narcotic Drugs Association, while international NGOs include Association Francois Xavier Bagnoud, World Vision International, World AIDS Foundation, Medicins du Monde, Medicins Sans Frontieres, AICF (France), Bridge Asia (Japan), IFCRC and the Thai Red Cross Society.

L. The Myanmar Citizenship Law

Allegations to the effect that the Myanmar Citizenship Law has a discriminatory effect on some sections of the population in Rakhine State are misplaced. In the Union of Myanmar, all are equal in the eyes of the law and under the Myanmar Citizenship Law.

The shortcomings of the Union Citizenship Act (1948) enacted after Myanmar gained independence became evident with the passage of time. As such, the Union Citizenship Act (1948) was revoked and the Myanmar Citizenship Law was promulgated on 15 October 1982. Under the new Myanmar Citizenship Law, there are three categories of citizens, namely: Citizen, Associate Citizen and Naturalized Citizen.

The provisions of the 1982 Citizenship Law stipulate that all foreign residents in Myanmar have the right to apply without any discrimination for naturalised citizenship, associate citizenship and citizenship. Under the provisions of 1982 Citizenship Law and 1989 Election Law, all have the right to vote in General Elections as well as all the rights and privileges that citizenship entitles them. Associate Citizens and Naturalized Citizens do have the right to vote, but unlike full citizens cannot stand as candidates in General Elections.

M. Myanmar's cooperation with the United Nations and the Commission on Human Rights

Myanmar's whole-hearted support for the principles of the United Nations Charter and its cooperation with the World Organization are the basic tenets of Myanmar's Foreign Policy. Accordingly, Myanmar has consistently cooperated with the United Nations in all fields including human rights.

Thus, in his speech before the 49th United Nations General Assembly on 11 October 1994, the Minister for Foreign Affairs of Myanmar stated:

> "As a responsible member of the United Nations and as an unwavering advocate of the values it represents, the Union of Myanmar has all along upheld and adhered to the basic notions of human rights enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights".

In fact, Myanmar was a participant in the drafting of the 1948 Universal Declaration of Human Rights. Moreover, Myanmar has signed and ratified a number of UN Human Rights Conventions and Agreements, as well as the ILO Conventions, which are in consonance with her own conditions and policies.

In keeping with this tradition, the State Law and Order Restoration Council has acceded to various agreements related to the field of human rights. Myanmar acceded to the Convention on the Rights of the Child, and Secretary-1 of the State Law and Order Restoration Council signed the World Summit for Children Declaration on the Survival, Protection and Development of Children. In accordance with the provisions of the Convention, a National Committee has been established under the aegis of the Ministry of Social Welfare, Relief and Resettlement and is submitting regular reports to the United Nations.

Similarly, Myanmar has already acceded to the 1949 Four Geneva Conventions.

Myanmar acceded to these Conventions as an affirmation of her international commitment to humanitarian principles. Indeed, Myanmar had long been observing these principles even before her accession to the Conventions. They have also been part of the education and training of the Myanmar Armed Forces.

In addition to these international conventions, the State Law and Order Restoration Council has enacted numerous domestic legislation relating to human rights.

In pursuance of UNGA Resolutions, the Government of the Union of Myanmar conducted a dialogue with the United Nations during the Forty-ninth Session of the U.N. General Assembly. U Ohn Gyaw, Minister for Foreign Affairs of the Union of Myanmar had a meeting with Dr. Boutros Boutros Ghali, Secretary-General of the United Nations and two rounds of discussions with Mr. Marrack Goulding, Under-Secretary-General for Political Affairs of the United Nations.

Subsequently, Under-Secretary-General Mr. Rafeeudin Ahmed, Representative of the United Nations Secretary-General paid a visit to Myanmar from 20 to 23 November 1994 and held discussions with the authorities of the Myanmar Government.

In addition, Mr. Alvaro de Soto, Assistant Secretary-General for Political Affairs of the United Nations paid a visit to Myanmar during the earlier part of February 1995 and held discussions with Myanmar authorities on matters of mutual interest.

The Government of the Union of Myanmar has responded to all the specific allegations received from the Centre for Human Rights and provided the information sought by the Special Rapporteur on the situation of human rights in Myanmar, thematic rapporteurs, Chairmen of the Working Groups and the Centre for Human Rights.

The Government of the Union of Myanmar will continue to cooperate with the Commission on Human Rights.

N. Conclusion

The Government of the Union of Myanmar believes that there no longer exists valid ground for introducing a formal resolution on the human rights situation in Myanmar at this year's session of the Commission. The foregoing positive developments in Myanmar and numerous concrete measures taken by the Government for democratization, development and the socio-economic uplift of the people including their enjoyment of human rights, warrant a deferral of the consideration of any draft resolution on Myanmar, or a downgrading of the procedure on this question by the Commission.

In view of the foregoing and the cooperation on the part of the Myanmar Government, it is hoped that these gestures will be reciprocated by the Commission by having a balanced view on the consideration of this question, and by not pursuing any course of action that may hamper the ongoing constructive cooperation between Myanmar and the United Nations. If ever a draft resolution is to be introduced at the current session of the Commission, the foregoing considerations require that such a draft resolution should fully and accurately reflect the positive developments, taking place in the Union of Myanmar.